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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,447	03/02/2004	Janzen Lo	3186.00004	3444

7590

11/29/2005

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EXAMINER

KIM, JOHN

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TJL

<b>Office Action Summary</b>	<b>Application No.</b> 10/791,447	<b>Applicant(s)</b> LO ET AL.	
	<b>Examiner</b> John Kim	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

New drawings were received on July 23, 2004. Examiner notes new drawings would replace the "hand-drawn" figures presented with the initial application, received on March 2, 2004. However the new drawings are objected to; please see below.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: On page 16 of the specification, third paragraph starts with "Figure 18 shows a bone implant 10, 10', 10", 10'''", attached to an implant insertion device 60." Figure 18 only shows implant 10. In the same paragraph, the specification refers to figure 19 and 20 to have 22, 22', 22", 22''' and 26, 26', 26", 26'''". However these figures also do not include the reference numbers. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: In the brief description on the drawings (page 7), "figure 17 is the cross sectional view taken along line A-A in figure 17 (itself). A figure can not represent itself in a cross section view if only one figure is presented.

Appropriate correction is required.

The disclosure is objected to because of the following informalities: On page 17 of the specification, the second complete paragraph (lines 15-18) that starts with "Throughout this application, various..." There are no publications, etc in the specifications as suggested by the applicant nor any citations provided by the applicant.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Urbahns et al. (US Pat. 6,159,215 Dec 12, 2000).

In regards to claims 1-5, Urbahns teaches an instrument for delivery of a vertebral body spacer. Please see figures 5-10. The instrument has a handle (90), an

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insertion rod (70), an implant gripper (76) with a gripping surface (168), and a movable and fixed pin (278), where one of the tooth is fixed in reference and the tooth moves) extending from the gripping surface. As seen in the figures, the gripping surface is v-shaped. From figure 10, was can see that the teeth are offset from the gripping surface by an angle of 30 degrees and are smooth. Finally, Urbahns teaches that his instrument comes with various tip portions that can be screwed onto the insertion rod (col 6 lines 18-26).

In regards to claims 6-8, Urbahns teaches the teeth are "sized for extension through aperture (pin hole) and engagement with edges defining aperture of spacer (implant). As shown in figure 10, teeth (pin) extend through apertures and engage edges to prevent spacer (implant) from sliding out from space between fingers (implant gripper)." (col 6 lines 36-41) Thus, the pins (278) enter the pin holes (17) of the implant (16). Thus the implant is locked onto the device. The implant is then inserted into the spine, whereby the surgeon detaches the implant from the device. (col 8, lines 30-61)

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-2817. The examiner can normally be reached on M-F 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JK

  
**EDUARDO C. ROBERT**  
**PRIMARY EXAMINER**